

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Johnathon A. Goss,)	Civil Action No. 9:14-4319-RMG
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Robert Stevenson, III; Sharonda Sutton;)	
Michael Stephon; Gregory Washington;)	
Persey Jones; Gary Seibels;)	
)	
Defendants.)	
)	

This matter is before the Court on the Report and Recommendation of the Magistrate Judge (Dkt. No. 49) recommending that this Court dismiss this action for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Court hereby adopts the Report and Recommendation and dismisses the action with prejudice.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

On November 6, 2014, Plaintiff filed a *pro se* complaint seeking relief pursuant to 42 U.S.C. § 1983. Plaintiff appears to allege detention in a prison Special Management Unit in violation of South Carolina Department of Corrections policy. Defendants moved for summary judgment on October 21, 2015. Plaintiff failed to respond to that motion, despite receiving a

Roseboro order from the Court. (Dkt. No. 46.) The Magistrate Judge issued a Report and Recommendation recommending dismissal for want of prosecution on December 8, 2015. Plaintiff moved for an extension of time to file objections to the Report and Recommendation, which this Court granted. (Dkt. Nos. 51, 52.) On January 27, 2016, Plaintiff filed his objections to the Report and Recommendation. Therein, Plaintiff states, "I have no other choice but to forfeit my civil suit against Broad River Correctional Institution and their fierce team of lawyers." (Dkt. No. 54 (spelling error corrected).) Given that concession, the Court has no other choice but to adopt the Report and Recommendation and to dismiss with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Even if Plaintiff's objections are construed as a notice of voluntary dismissal, it would be one filed after service of a motion for summary judgment, so dismissal without prejudice under Rule 41(a) is not available. Fed. R. Civ. P. 41(a).

For the foregoing reasons, the Court **ADOPTS** the Report and Recommendation as the Order of this Court and **DISMISSES WITH PREJUDICE** the Complaint, and **DENIES AS MOOT** and Defendants' motion for summary judgment (Dkt. No. 45).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

February 2, 2016
Charleston, South Carolina